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DATE: November 12, 2008

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FOR: Peter Bertheaud, Examiner

COMPANY: United States Patent and Trademark Office

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FROM: Michael L. Smith

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COMMENTS:

Re: U.S. Patent Application No. 10/673,296

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November 12, 2008

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VIA FACSIMILE: 571-273-8300

Mr. David Bucci
Petitions Examiner
Office of Petitions
P.O. Box 1450
Alexandria, Virginia 22314

Re: U.S. Patent Application No.: 10/673,296
Mittlestein, et al.
In the name of Bausch & Lomb Incorporated
Our Ref: P03115

Dear Mr. Bucci:

This is in response to the Decision Refusing Status Under 37 CFR 1.47(a) mailed on 1 October 2008 by the Office of Petitions concerning application 10/673,296. I believe a failure in the Patent Office's procedures has occurred and resulted in the premature issuance of application 10/673,296 as US Patent 7,445,436. Somehow, the application continued to issuance even though the Office of Petitions was working with me to obtain a properly signed declaration from one joint inventor.

A petition under 1.47(a) was dismissed and a two month period, starting from the 1 October 2008 mailing date, was set to correct a deficiency set forth in the Decision. I set about curing the deficiency by sending, via FedEx, a new declaration to joint inventor Robert Schauer, on 24 October 2008 listing all the inventors. The signed declaration was received back from Mr. Schauer on 10 November 2008, and is attached to this letter.

I was preparing to forward the signed declaration to the Office of Petitions, when I became aware that US Patent 7,445,436 had issued before a proper declaration was filed.

Harness, Dickey & Pierce, P.L.C. Attorneys and Counselors Metropolitan: Detroit, MI St. Louis, MO Washington, DC

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I am requesting that the properly signed declaration attached to this letter be entered into the file of application 10/673,296 because, through no fault of mine or the applicant, the patent issued before a properly signed declaration was filed.

Respectfully submitted,



Michael L. Smith
Reg. No. 35,685

MLS:csy

Attachment – Declaration and Power of Attorney

cc: John J. Doll, Commissioner of Patents
John J. Love, Deputy Commissioner for Patent Examination Policy
Peter Bertheaud, Examiner